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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,499	10/28/2003	Vincenzo Scarlato	2300-0363.01	7930

27476 7590 11/03/2004  
Chiron Corporation  
Intellectual Property - R440  
P.O. Box 8097  
Emeryville, CA 94662-8097

EXAMINER

GRASER, JENNIFER E

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/695,499	<b>Applicant(s)</b> SCARLATO ET AL.	
	<b>Examiner</b> Jennifer E. Graser	<b>Art Unit</b> 1645	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-14 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 2-14 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

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## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 4-6, and 14, drawn to proteins, classified in class 530, subclass 350. **NOTE:** Applicants must elect a ***single*** protein represented by a single sequence identifier out of the 42 amino acid sequences recited if this Group is elected. Only one protein (sequence identifier) will be searched.
  - II. Claims 2, 3, and 8-13, drawn to nucleic acid molecules, classified in class 536, subclass 23.7. **NOTE:** Applicants must elect a ***single*** nucleic acid molecule represented by a single sequence identifier out of the 42 nucleic acid sequences recited if this Group is elected. Only one nucleic acid molecule (sequence identifier) will be searched.
  - III. Claim 7, drawn to an antibody, classified in class 530, subclass 387.1. **NOTE:** Applicants must elect a ***single*** sequence identifier to which this antibody binds out of the 42 amino acid sequences recited if this Group is elected. Only one antibody will be searched.
2. The inventions are distinct, each from the other because of the following reasons:

Groups I, II and III are patentably distinct from one another because they are drawn to products which are biologically, chemically and structurally different, i.e., a protein, a nucleic acid and an antibody. Further, each of these three Groups contains 42 separate and distinct inventions represented by different sequence identifiers.

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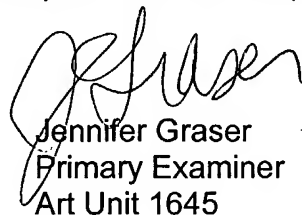
Applicants must elect one invention, i.e., one sequence identifier, to be searched if one of these Groups is elected. This is **not** a species election because these different proteins/nucleic acids possessing different amino acids/nucleotide sequences are structurally distinct from one another. Additionally, the 45 different antibodies of Group III bind to structurally different proteins and are therefore patentably distinct from one another. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and their recognized divergent subject matter and since the literature search for the Groups is not coextensive, restriction for examination purposes as indicated is proper.

3. Correspondence regarding this application should be directed to Group Art Unit 1645. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Remsen. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1645 Fax number is (703) 872-9306 which is able to receive transmissions 24 hours/day, 7 days/week.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Graser whose telephone number is (571) 272-0858. The examiner can normally be reached on Monday-Friday from 7:00 AM-4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached on (571) 272-0864.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-0500.

  
Jennifer Graser  
Primary Examiner  
Art Unit 1645  
11/4/01